DOCKET NO.: LLI-CV21-6028332-S	**:**	**SUPERIOR COURT**
MARK BOUCHER, ET AL.	**:**	**JUDICIAL DISTRICT OF LITCHFIELD**
V.	**:**	**AT TORRINGTON**
BROOKE NIHAN, ET AL.	**:**	**SEPTEMBER 9, 2021**

COVER SHEET FOR OBJECTION TO REQUEST TO REVISE

The Plaintiffs in the above-entitled matter hereby object pursuant to Practice Book § 10-37 to Defendants' first and only requested revision. *See* Docket Entry No. 101.00. That objection is set forth in the appended document pursuant to § 10-37(b).

PLAINTIFFS,
MARK BOUCHER AND
ANGELA BOUCHER

By: /429371/
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CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or nonelectronically on September 9, 2021, to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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#

REQUEST TO REVISE

Pursuant to CT Practice Book sec. 10-37 et. sec. defendants Nihan and Griffin seek revisions in the Complaint, filed by plaintiffs Boucher dated 09 June 2021. More specifically defendants request the following revisions:

1) **a) Portion, Common Facts**: "17. After the felling of the trees, Plaintiffs contacted Defendants. 18. Defendants recommended that Plaintiffs make a proposal as to how to resolve the situation. 19. Plaintiffs requested that Defendants refrain from reentering the Boucher property while Plaintiffs formulated their proposal."

b) Revision Requested: Deletion of paragraphs 17 – 19 inclusive of the Complaint as inappropriate under Connecticut law in that the specific paragraphs recite direct communications between the parties, pre-suit, in an attempt at settlement negotiations.

c) Reason for the Request: Settlement discussions between parties are inadmissible, per CT Code of Evidence, Sec. 4-8: Offers of Compromise. Additionally, settlement discussions between parties are generally inadmissible under CT common law, to wit: "We begin our analysis by setting forth relevant legal principles. 'It has long been the law that offers relating to compromise are not admissible on the issue of liability.' Simone Corp. v. Connecticut Light &

Power Co. 187 Conn. 487, 490, 446 A.2d 1071 (1982). ‘Section 4-8 (a) of the Connecticut Code of Evidence provides the general rule that evidence of an offer to compromise or settle a disputed claim is inadmissible on the issues of liability and the amount of the claim.’ The rule does not require the exclusion of ‘evidence that is offered for another purpose, such as proving bias or prejudice of a witness, refuting a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution, or ... statements of fact or admissions of liability made by a party.’ Conn. Code Evid. § 4-8 (b) (1) and (2). ‘This rule reflects the strong public policy of promoting settlement of disputes.’ Miko v. Commission on Human Rights & Opportunities, 220 Conn. 192, 209, 596 A.2d 396 (1991).”Kovachich v. Dep't of Mental Health & Addiction Servs., 199 Conn.App. 332, 236 A.3d 219 (Conn. App. 2020) As the pleadings are often available to the trial jury, by reading and/or reference by the court, argument by counsel or by being provided to the jury during deliberations, it is improper for the complaint to recite inadmissible pre-suit settlement discussion between the parties.

Reply: Plaintiffs object on the following grounds. First, Defendants’ request is premature. In undersigned’s experience, the jury is not given a copy of the complaint or otherwise informed of its contents at the level of detail envisioned by Defendants. (The jury pool is apprised of the general claims of the complaint prior to *voir dire*, but such would not include details such as those alleged in Paragraphs 17-19.) The appropriate time for Defendants’ request would be at the conference for determining jury instructions or possibly through a motion *in limine* at the outset of trial.

Second, it is far from clear that evidence of the facts alleged in Paragraphs 17-19 would be inadmissible. The following legal principles are relevant. “Evidence of an offer to compromise or settle a disputed claim is inadmissible on the issues of liability and the amount of the claim.” Conn. Code Evid. § 4-8(a). “This rule does not require the exclusion of: (1) Evidence that is offered for another purpose, *such as* proving bias or prejudice of a witness, refuting a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution . . . .” *Id.* § 4-8(b) (emphasis added). In the context of the analogous Federal Rule of Evidence 408, one such other purpose is proving notice. *See United States v. Austin*, 54 F.3d 394, 400 (7th Cir. 1995). In the present case, the discussion set forth in Paragraphs 17-19 shows that Defendants were on notice as to the offending conduct but nonetheless, through their agent, felled a tree on Defendants’ property that fell onto Plaintiffs’ property, damaging two more of the latter’s trees. *See* Compl. ¶ 20. Accordingly, evidence of the allegations in Paragraphs 17-19 would be admissible or, at the least, their admissibility should be determined through a motion *in limine* at the outset of trial once the parties have had the opportunity to further develop facts.

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